



**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

DMP:CRH/JMH/EHS  
F. #2017R00906

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December 23, 2021

By ECF and Email

The Honorable Pamela K. Chen  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: United States v. Hu Ji, et al.  
Criminal Docket No. 21-265 (S-1) (PKC)

Dear Judge Chen:

The government respectfully writes to request an approximately six-week adjournment of its deadline to file its in camera, ex parte submission pursuant to Section 4 of the Classified Information Procedures Act ("CIPA"), 18 U.S.C. § App. 3. The government's submission is currently due on January 14, 2022, and the requested extension would reset that deadline to February 25, 2022. Counsel for the defendants have no objection to the government's request.

As the government previously advised the Court, the above-referenced case implicates classified information. See Motion dated June 7, 2021, ECF No. 66. The Court subsequently granted the government's request to file any CIPA Section 4 motion by January 14, 2022. See Minute Entry dated July 14, 2021.

Since that time, the government has worked to identify the universe of potentially discoverable classified material, and assessed the nature and volume of such material. The government has largely completed its review of potentially discoverable classified information and has prepared a draft of its CIPA Section 4 memorandum. However, more recently, the government has identified a limited set of additional materials that requires review. Some of this material may need to be reviewed at a secure facility, and the logistics of gaining access to such facility for the review are difficult as certain restrictions on access have been put in place as a result of the ongoing COVID-related pandemic. If conditions as a result of the Omicron-variant of COVID do not permit the government to access the secure facilities, the government will notify the Court. Following this review, the government's motion may need to be updated to incorporate the government's proposals related to this newly identified information.

Additionally, the government's submission includes not only the government's memorandum but also supporting declarations from senior government officials. As the Court is aware, under Second Circuit law, the government's filing must be supported by a declaration of the "head of the department which has control over the matter, after actual personal consideration by that officer." See United States v. Abu-Jihad, 630 F.3d 102, 129 (2d Cir. 2010). The preparation of such declarations cannot be completed until after the government completes its review of potentially discoverable classified information. Moreover, because the declarations both rely on and contain classified information, the officials preparing and reviewing the declarations are required to conduct their work in secure facilities, rather than remotely or online. The same restrictions put in place with regard to access to secure facilities as a result of the pandemic may cause some delays in the preparation and approvals of these declarations. Once the declarations are completed, the government will need to update its memorandum to incorporate the substance of the declarations.

The government estimates that the remaining review and declaration process should take approximately six additional weeks from the current deadline. Additionally, the government will continue to proceed with other pre-trial matters in this case without delay. Specifically, the government anticipates that it will file a response to defendant Michael McMahon's motion to dismiss on its current January 22, 2022 deadline, will continue to work towards the completion of discovery, and will be prepared to address any other matters raised by counsel. Other cases in this district have faced similar challenges, and the judges presiding over those cases have granted extensions for similar reasons. See, e.g., United States v. Asainov, No. 19-CR-402 (NGG), Order dated Nov. 5, 2020 (E.D.N.Y.); United States v. Chudhary, No. 20-CR-135 (CBA), Order dated Dec. 11, 2020.

For all of these reasons, the government respectfully requests that the Court adjourn the deadline for the government to file its submission pursuant to CIPA Section 4 from January 14, 2022 to February 25, 2022.

Respectfully submitted,

BREON PEACE  
United States Attorney

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cc: Clerk of Court (PKC) (By ECF)